



## ACA Section 1341 Transitional Reinsurance Program FAQs

Section 1341 of the Affordable Care Act establishes a transitional Reinsurance Program to help stabilize premiums for coverage in the individual market during the years 2014 through 2016. The statute requires all health insurance issuers and third-party administrators on behalf of self-insured group health plans to make contributions under this program to support payments to individual market issuers that cover high-cost individuals (payment-eligible issuers). Regulations proposed by the Department of Health and Human Services to implement the Reinsurance Program specify that self-insured group health plans are liable for the contributions, although a plan may utilize a third-party administrator or administrative-services-only contractor for transfer of the contributions.

The Department of Labor has advised that paying required contributions under the Reinsurance Program would constitute a permissible expense of the plan for purposes of Title I of the Employee Retirement Security Act (ERISA) because the payment is required by the plan under the Affordable Care Act as interpreted in the proposed rule issued by the Department of Health and Human Services.

Taxpayers generally may deduct ordinary and necessary business expenses, including most fees and taxes paid to the government. However, under the rules of the Internal Revenue Code, deductions for ordinary and necessary business expenses may be disallowed, limited, or deferred in some circumstances. For example, taxpayers that use inventories may be required to include these expenses in their inventory costs, while deductions for taxpayers that are insurance companies may be affected by rules under Subchapter L.

The following questions and answers provide information on the treatment of contributions made under the Reinsurance Program.

**Q1:** How may a health insurance issuer treat the contributions under the Reinsurance Program?

**A1:** Health insurance issuers will be able to treat contributions under the Reinsurance Program as ordinary and necessary expenses paid or incurred in carrying on a trade or business, subject to any applicable disallowances or limitations, or as a reduction to taxable income as provided under Subchapter L.

**Q2:** May a sponsor of a self-insured group health plan treat contributions under the Reinsurance Program as ordinary and necessary business expenses?

**A2:** Yes. A sponsor of a self-insured group health plan that pays Reinsurance Program contributions may treat the contributions as ordinary and necessary business expenses, subject to any applicable disallowances or limitations under the Code. This treatment applies whether the contributions are made directly or through a third-party administrator or administrative-services-only contractor. If a plan pays Reinsurance Program contributions directly or through a third-party administrator, as may happen, for example, in the case of a multiemployer plan or a plan funded through a voluntary employees' beneficiary association, the employer or employers contributing to the plan would be permitted to deduct their contributions to the plan, subject to any generally applicable disallowances or limitations.